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Attorneys for defendant Araz Alali

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	V
EDWIN VERAS,	X : Case No. 07-CV-11172 (CLB)
Plaintiff,	:
-against-	: :
CITY OF NEW ROCHELLE, ARAZ ALALI, JOHN and JANE DOES 1 through 10,	; ; ;
Defendants.	; ; v

MEMORANDUM OF LAW IN SUPPORT OF MOTION PURSUANT TO LOCAL RULE 1.4 TO BE RELIEVED AS COUNSEL

> SILVERBERG ZALANTIS LLP Attorneys for Defendant Araz Alali 3 Barker Avenue, Suite 180 White Plains, New York (914) 682-0707

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Introduction

It is fundamental that there cannot be effective representation without an open line of communication between the attorney and client. Despite repeated requests in writing and otherwise, Police Officer Alali has made no effort to contact the attorneys at Silverberg Zalantis LLP and thus far, has not been engaged in any aspect of his defense in this action. Thus, it is respectfully requested that this Court grant the application of Silverberg Zalantis LLP to be relieved of counsel.

Point I

THIS COURT SHOULD GRANT THE REQUESTED APPLICATION

Rule 1.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York provides that:

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the court and may not withdraw from a case without leave of the court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.¹

The Second Circuit has ruled that "[d]istrict courts are due considerable deference in decisions not to grant a motion for any attorney's withdrawal." Nonetheless, the Second Circuit has recognized that "[i]n addressing motions to withdraw as counsel, district courts have typically considered whether 'the prosecution of suit is [likely to be]

¹ Rule 1.4 of Local Rules of the SDNY and EDNY.

² Whiting v. Lacara, 187 F.3d 317, 320 (2d Cir. 1999).

disrupted by the withdrawal of counsel." As noted by the Second Circuit, while district courts have denied motions to be relieved when the case is "on the verge of trial readiness," district courts have granted such motions in other situations where the case was at its beginning stages "finding that because 'discovery is not complete and the case is not presently scheduled for trial . . . granting the instant motion will not likely cause undue delay."

Here, as this litigation is only at its beginning stages as a discovery schedule has not even been established, there will be relatively little disruption by the withdrawal of Silverberg Zalantis LLP as counsel for Police Officer Alali. Silverberg Zalantis LLP cannot continue to provide effective representation to Police Officer Alali without an open line of communication between the attorney and client. Further, once this Court issues a scheduling order as anticipated on April 28, 2008, Police Officer Alali's counsel will be faced with a relatively tight deadline to depose Plaintiff and then make the appropriate motion on the issue of the qualified immunity defense. Without Police Officer Alali's cooperation, Silverberg Zalantis LLP cannot effectively defend his interests during this next stage of the litigation.

Again, while Silverberg Zalantis LLP feels strongly about the likelihood of success of Police Officer Alali's qualified immunity defense and other defenses raised, Silverberg Zalantis LLP cannot continue to represent Police Officer Alali's interests without any input, guidance or cooperation from Police Officer Alali.

⁵ Id., citing, Brown at *3.

³ Id., citing, Brown v. National Survival Games, Inc., No. 91-CV-221, 1994 WL 660533, at *3 (N.D.N.Y. 1994).

⁴ Id. at 321, citing, Malarkey v. Texaco, 81 Civ. 5224, 1989 WL 88709, at *2 (S.D.N.Y. 1989).

Conclusion

For the reasons stated herein, this Court should grant Silverberg Zalantis LLP's application in its entirety.

Dated: White Plains, New York April 4, 2008

Respectfully submitted,

SILVERBERG ZALANTIS LLP Attorneys for the Defendant ARAZ ALALI

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK) ss.:
COUNTY OF WESTCHESTER)

I, Teresa Maldonado, being sworn, say:

I am not a party to the action, am over the age of 18 years of age and reside in Westchester County, New York

On April 4, 2008, I served the MEMORANDUM OF LAW IN SUPPORT OF MOTION PURSUANT TO LOCAL RULE 1.4 via overnight mail by depositing a true copy thereof, enclosed in a wrapper addressed as shown below, into the custody of Federal Express for overnight delivery, prior to the latest time designated by that service for next day delivery, addressed:

TO:

Brett H. Klein, Esq. LEVENTHAL & KLEIN, LLP Attorneys for Plaintiff 45 Main Street, Suite 230 Brooklyn, New York 11201

Police Office Araz Alali New Rochelle Police Department 475 North Avenue New Rochelle, NY 10801 In an envelope marked "Personal & Confidential" Peter A. Meisels, Esq.
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP
Attorneys for Defendant City of New Rochelle
3 Gannett Drive
White Plains, New York 10601

Courtesy Copy To:
Jonathan Lovett, Esq.
Lovett & Gould. LLP
222 Bloomingdale Road
White Plains, New York 10605

Sworn to before me this 4th day of April, 2008

Notary Public

Katherine Zalantis
Notary Public State of New York
No. 02ZA5067359
Qualified in Westchester County
Commission Expires 10/15/10